

- 1 AN ACT to amend 161.55 (1) (d) 4 and (3) (intro.) and 973.075 (1) (b) 3
2 and (5) (intro.); and to create 161.555 (2) (d) and 973.076 (2) (d) of
3 the statutes, relating to forfeiture of vehicles used in connection
4 with a felony and default judgments.

Analysis by the Legislative Reference Bureau

Under present law, a vehicle which is used to transport property or weapons used or received in the commission of a felony is subject to forfeiture. Present law specifies certain exceptions to the forfeiture requirement for innocent persons: where the vehicle is a common carrier and the person in charge of the vehicle did know of or consent to the felony; where the felony was committed without the knowledge or consent of the owner of the vehicle; and where a person has a bona fide perfected security interest in the vehicle and did not know of or consent to the felony. In addition, there is a general provision that states that the forfeiture or disposition of the vehicle must be made with "due provision for the rights of innocent parties". This general language has been construed by the court of appeals to apply to cover situations beyond those described in the 3 specified exceptions (State v. Fouse, 120 Wis. 2d 471 (Ct. App. 1984)).

This bill limits the rights of innocent persons provision to the 3 specified exceptions. Further, in the case of the perfected security interest, the holder of the interest is paid from proceeds of the forfeiture only if the security interest was perfected before the felony was committed.

The bill also adds a provision regarding court procedure for actions seeking forfeiture of property derived from or used in the commission of a crime. The bill specifies that the default judgment provisions for ordinary civil actions apply in these forfeiture actions.

For further information, see the state and local fiscal estimate which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly,
do enact as follows:

gfb

1985 Session

FISCAL ESTIMATE
AD-MBA 23 (Rev. 11/84)

☒ ORIGINAL ☐ UPDATED
☐ CORRECTED ☐ SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
SB 419
Amendment No. if Applicable

Subject: **Forfeiture of Vehicles Used in Felonies**

Fiscal Effect

State: ☐ No State Fiscal Effect

Check columns below only if bill makes a direct appropriation
or affects a sum sufficient appropriation.

☐ Increase Existing Appropriation ☐ Increase Existing Revenues
☐ Decrease Existing Appropriation ☐ Decrease Existing Revenues
☐ Create New Appropriation

☐ Increase Costs - May Be Possible to Absorb
Within Agency's Budget ☐ Yes ☐ No
☐ Decrease Costs

Local: ☐ No local government costs

1. ☐ Increase Costs
 ☐ Permissive ☐ Mandatory
2. ☐ Decrease Costs
 ☐ Permissive ☐ Mandatory

3. ☐ Increase Revenues
 ☐ Permissive ☐ Mandatory
4. ☐ Decrease Revenues
 ☐ Permissive ☐ Mandatory

5. Types of Local Governmental Units Affected
☐ Towns ☐ Villages ☐ Cities
☐ Counties ☐ Others _____

Fund Sources Affected

☐ GPR ☐ FED ☐ PRO ☐ PFS ☐ SEG ☐ SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

Present law provides that a vehicle used in the commission of a felony is subject to forfeiture but allows certain exceptions for innocent persons. This bill narrows these exceptions. It also allows a court to render a default judgment in these forfeiture actions.

Although the exact number of such actions is not known no significant impact upon trial court operations is expected as a result of this measure.

Long-Range Fiscal Implications

Authorized Signature/Telephone No.

11984

Date

1985

DRAFTING REQUEST

Extra
Copies

BF

LRB

2364

Date rec'd 1/31Received by BF

Wanted

Drafter

BF

S

A

Bill

Jt. Res.

Res.

Sub. Amdt.

Amdt.

SUBJECT

forfeiture - drug cases and crimes

FOR

DPT OF JUSTICE

BY/Representing

BILL INDEX

CRIMINAL LAWThis file MAY BE SHOWN
to any legislator

(Signature)

MAY CONTACT

INSTRUCTIONS:

See att'd (make some change
in or 973.075
to 973.072)

Work/O	/P1	/P2	/P3		1st	2nd	3rd	4th	5th
				Drafted	BF	BF			
				Reviewed	3/26	9/25			
				Typist	1A	9/26			
Original to drafter				Proofed	12/14	9/26			
				Submitted	3/26	9/26			
All "/P" copies: give to drafter					FE-S/L PUBDED RETIRE TAXEXM	FE-S/L PUBDED RETIRE TAXEXM	FE-S/L PUBDED RETIRE TAXEXM	FE-S/L PUBDED RETIRE TAXEXM	FE-S/L PUBDED RETIRE TAXEXM

FE sent for

11-20

Requested

(Please sign below)

ORIGINAL draft:

Buc [Signature]

Received
JACKET:

AN ACT to amend 161.55(1)(d)4. and 161.55(3) of the statutes,
relating to forfeitures under the Uniform Controlled
Substances Act.

The people of the state of Wisconsin, represented in senate
and assembly, do enact as follows:

SECTION 1. 161.55(1)(d)4. of the statutes is amended
to read:

161.55(1)(d)4. A When forfeiture of a vehicle
encumbered by a bona fide perfected security interest is
subject-to-the-interest-of-the-secured-party-if occurs, the
holder of the security interest shall be paid from the
proceeds of the forfeiture if such security interest was
perfected prior to the date of seizure and he or she neither
had knowledge of nor consented to the act or omission.

SECTION 2. 161.55(3) of the statutes is amended to
read:

161.55(3) In the event of seizure under sub. (2),
proceedings under sub. (4) shall be instituted promptly.
All dispositions and forfeitures under this section and

ss. 161.555 and 161.56 shall be made with due provision for the rights of innocent persons under subsection (1)(d) 1., 2. and 4. of this section. Any property seized but not forfeited shall be returned to its rightful owner. Any person claiming the right to possession of property seized may apply for its return to the circuit court for the county in which the property was seized. The court shall order such notice as it deems adequate to be given the district attorney and all persons who have or may have an interest in the property and shall hold a hearing to hear all claims to its true ownership. If the right to possession is proved to the court's satisfaction, it shall order the property returned if:

(a) The property is not needed as evidence or, if needed, satisfactory arrangements can be made for its return for subsequent use as evidence; or

(b) All proceedings in which it might be required have been completed.

03/26/85

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2364/1dn
BF:lt

The original request affected only the uniform controlled substances act. I revised the general crime-forfeiture procedure (ss. 973.075 to 973.077) in the same manner.

Bruce Feustel
Senior Legislative Attorney
266-0131

CORRESPONDENCE/MEMORANDUM

STATE OF WISCONSIN

Date August 12, 1985

To Frank Ryan
Director of Research and Information

From James C. McKay
Assistant Attorney General

Subject LRB-2364/1 and Other Amendments

Instructions
for 2364/2

Pursuant to your request, I believe the following language will accomplish what we believe appropriate and necessary:

I

The following would be the language we and other prosecutors believe more appropriate for sections 161.55(1)(d)4 and 973.075(1)(b)3:

161.55(1)(d)4. A If forfeiture of a vehicle encumbered by a bona fide perfected security interest ~~is subject to the interest of the secured party if~~ occurs, the holder of the security interest shall be paid from the proceeds of the forfeiture if the security interest was perfected prior to the date of seizure the commission of the offense which forms the basis for the forfeiture and he or she neither had knowledge of nor consented to the act or omission.

973.075(1)(b)3. A If forfeiture of a vehicle encumbered by a bona fide perfected security interest ~~is subject to the interest of the secured party if~~ occurs, the holder of the security interest shall be paid from the proceeds of the forfeiture if the security interest was perfected prior to the date of seizure the commission of the offense which forms the basis for the forfeiture and he or she neither had knowledge of nor consented to the act or omission.

II

Also, at your request the following is the specific language which we feel should appear in sections 161.555(2) and 973.076(2) as new subsections:

161.555(2)(d). If no answer is served or no issue of law or fact has been joined and the time for such service or joining issue has expired, or if any defendant fails to appear at trial after answering or joining issue, default judgment may be rendered as provided in chapter 806, Stats.

973.076(2)(d). If no answer is served or no issue of law or fact has been joined and the time for such service or joining

Frank Ryan
Page 2
August 12, 1985

issue has expired, or if any defendant fails to appear at trial
after answering or joining issue, default judgment may be
rendered as provided in chapter 806, Stats.

Thank you for your assistance on these, and if there are
further questions, of course, please give me a call.

JCM:xmg

cc: Michael L. Zaleski

Dsida, Michael

From: Dsida, Michael
Sent: Monday, September 15, 2003 9:43 AM
To: Cady, Dean
Subject: FW: Last comment -- I think

When writing the analysis, I realized that it may not make sense after all to have a law enforcement agency destroy copied data upon an acquittal or dismissal. There might be cases in which there was a crime committed (such as possession of child pornography), but the identity of the perpetrator is unclear. If a person is properly acquitted in such a case, you may want to permit the police to retain the data in case they find the person who really committed the offense.

Mike Dsida
mdsida@chorus.net

09/15/2003

Dsida, Michael

From: Cady, Dean
Sent: Monday, October 06, 2003 1:27 PM
To: Dsida, Michael
Subject: RE: Cleaning the hard drive

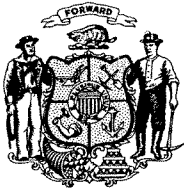
Thankx a lot Michael. Yes, to the best extent possible the agency should "clean" the hard drive of all information relating to the sex offense. That should do it.
cheers,
deano

-----Original Message-----

From: Dsida, Michael
Sent: Monday, October 06, 2003 12:59 PM
To: Cady, Dean
Subject: Cleaning the hard drive

One of our editors just asked an interesting question -- if a computer is forfeited, should the law enforcement agency be required to purge any problematic data (such as images of child pornography) from the hard drive of the computer? As you may know, after a document is deleted, it may still be possible to recover it from the hard drive. I don't know how easy it is to retrieve it or how difficult it would be for a law enforcement agency to purge the data from the hard drive, but since the agency may be selling it to a nonprofit or returning it to an innocent owner, I thought I should let you know about the issue.

Mike Dsida
Legislative Reference Bureau
608/266-9867
michael.dsida@state.legis.wi.us



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-2925/P1

MGD:cjs:pg

SOON

7 days

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

ask the disposition
of certain forfeited
property

committing a
child sex offense

Reg cat.

1 AN ACT *to repeal* 973.075 (1) (b) 2m. c.; *to renumber* 302.116 (1) (a), 973.075 (5)
2 (a) and 973.075 (5) (b); *to renumber and amend* 973.075 (5) (intro.); *to amend*
3 29.934 (1) (d), 973.075 (1) (bg), 973.075 (1) (bj), 973.075 (1) (bm), 973.075 (1) (d),
4 973.075 (1) (e) and 973.075 (4); and *to create* 302.116 (1) (ad), 302.116 (1) (ag),
5 302.116 (3), 304.061, 973.075 (1) (f), 973.075 (1m), 973.075 (5) (bm) and 973.09
6 (8) of the statutes; **relating to:** seizure of computers used in cases of crimes
7 ~~involving~~ ^{against children} and the use of a computer by a person convicted of a child sex
8 offense and providing a penalty.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

analysis INSERT

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

9 SECTION 1. 29.934 (1) (d) of the statutes is amended to read: ^{am}
10 29.934 (1) (d) The provisions of s. 973.075 (1) (b) 2m. and (5) ~~(a)~~ and (c) apply
11 to boats and vehicles, other than motor vehicles, under this subsection.

as defined in s. 943.70(1)(am)

<use 3x>

SECTION 2. 302.116 (1) (a) of the statutes is renumbered 302.116 (1) (ar).

SECTION 3. 302.116 (1) (ad) of the statutes is created to read:

302.116 (1) (ad) "Child sex offender" means a person who ^{has been} is convicted of a serious child sex offense, as defined in s. 948.13(1).

SECTION 4. 302.116 (1) (ag) of the statutes is created to read:

302.116 (1) (ag) "Computerized child pornography" means ^{an audio} a recording of a child engaged in sexually explicit conduct that may be viewed or heard by using a computer, as defined in s. 948.01(7).

SECTION 5. 302.116 (3) of the statutes is created to read:

302.116 (3) As a condition of extended supervision, a child sex offender may not use a computer unless it is running software that prevents the person from ^{obtaining} accessing to computerized child pornography. INS 2/12 ✓

SECTION 6. 304.061 of the statutes is created to read:

304.061 Parole condition for serious child sex offender. As a condition of parole, a child sex offender, as defined in s. 302.116 (1) (ad), may not use a computer unless it is running software that prevents the person from ^{obtaining} accessing to computerized child pornography, as defined in s. 302.116 (1) (ag). INS 2/17 ✓

SECTION 7. 973.075 (1) (b) 2m. c. of the statutes is repealed.

SECTION 8. 973.075 (1) (bg) of the statutes is amended to read:

973.075 (1) (bg) ^{1P} Any Subject to sub. (1m), any property used or to be used in the commission of a crime under s. 943.75 (2) or (2m), but if the property is encumbered by a bona fide perfected security interest that was perfected before the date of the commission of the current violation and the holder of the security interest neither had knowledge of nor consented to the commission of that violation, the holder of the security interest shall be paid from the proceeds of the forfeiture.

1 **SECTION 9.** 973.075 (1) (bj) of the statutes is amended to read:

2 973.075 (1) (bj) Any Subject to sub. (1m), any ^{1p} property used or to be used in the
3 commission of a crime under s. 943.74, ~~but if the property is encumbered by a bona~~
4 ~~fide perfected security interest that was perfected before the date of the commission~~
5 ~~of the current violation and the holder of the security interest neither had knowledge~~
6 ~~of nor consented to the commission of that violation, the holder of the security~~
7 ~~interest shall be paid from the proceeds of the forfeiture.~~

8 **SECTION 10.** 973.075 (1) (bm) of the statutes is amended to read:

9 973.075 (1) (bm) Any Subject to sub. (1m), any ^{1p} property used in the commission
10 of a crime under s. 813.12 (8), 813.122 (11), 813.123 (10), 813.125 (7), 813.128 (2) or
11 940.32, ~~but if the property is encumbered by a bonafide perfected security interest~~
12 ~~that was perfected before the date of the commission of the current violation and the~~
13 ~~holder of the security interest neither had knowledge of nor consented to the~~
14 ~~commission of that violation, the holder of the security interest shall be paid from the~~
15 ~~proceeds of the forfeiture.~~

16 **SECTION 11.** 973.075 (1) (d) of the statutes is amended to read:

17 973.075 (1) (d) A Subject to sub. (1m), a ^{1p} tank vessel that violates s. 299.62 (2)
18 that is owned by a person who, within 5 years before the commission of the current
19 violation, was previously convicted of violating s. 299.62 (2), ~~but if the tank vessel is~~
20 ~~encumbered by a bona fide perfected security interest that was perfected before the~~
21 ~~date of the commission of the current violation and the holder of the security interest~~
22 ~~neither had knowledge of nor consented to the commission of that violation, the~~
23 ~~holder of the security interest shall be paid from the proceeds of the forfeiture.~~

24 **SECTION 12.** 973.075 (1) (e) of the statutes is amended to read:

1 973.075 (1) (e) Any recording, as defined in s. 943.206 (5), created, advertised,
 2 offered for sale or rent, sold, rented, transported or possessed in violation of ss.
 3 943.207 to 943.209 or s. 943.49 and, ^{lp}subject to sub. (1m), any electronic, mechanical
 4 or other device for making a recording or for manufacturing, reproducing, packaging
 5 or assembling a recording that was used to facilitate a violation of ss. 943.207 to
 6 943.209 or s. 943.49, regardless of the knowledge or intent of the person from whom
 7 the recording or device is seized. ~~If a device subject to forfeiture under this paragraph~~
 8 ~~is encumbered by a bona fide perfected security interest that was perfected before the~~
 9 ~~date of the commission of the current violation and the holder of the security interest~~
 10 ~~neither had knowledge of nor consented to the commission of that violation, the~~
 11 ~~holder of the security interest shall be paid from the proceeds of the forfeiture.~~

12 SECTION 13. 973.075 (1) (f) of the statutes is created to read:

13 973.075 (1) (f) 1. Subject to sub. (1m), ^{lp}any computer, as defined in s. 943.70 (1)

14 (am), used or to be used in the commission of a ~~crime~~ ^{and except as provided in Subd. 2.} or an attempt to commit a ~~crime~~
 15 ^{as defined in s. 302.116 (1)(ag),} ~~under ch. 948~~ or used in the commission of any crime to which a person pleads guilty
 16 if the person does so in a case in which he or she has been charged with a ~~crime~~ or
 17 attempting to commit a ~~crime under ch. 948.~~ ^{Serious child sex offense} _{<use 4 x>}

18 2. Notwithstanding subd. 1, a computer is not subject to forfeiture, if its owner
 19 did not know that it was being used or was to be used ^{or consent to it being used} in the commission of or the ^{an}
 20 attempt to commit a crime described in subd. 1. ✓ ✓

21 SECTION 14. 973.075 (1m) of the statutes is created to read:

22 973.075 (1m) If any property under sub. (1) (b), (bg), (bj), (bm), (d), or (f) or any
 23 device under sub. (1) (e) is encumbered by a bona fide perfected security interest that
 24 was perfected before the date of the commission of the current violation and the
 25 holder of the security interest neither had knowledge of nor consented to the

under subd. 1.

or, unless it is property described in sub. (1m),
donate it

1 commission of that violation, the holder of the security interest shall be paid from the
2 proceeds of the forfeiture.

3 *Fix Com-ponent* → **SECTION 15.** 973.075 (4) of the statutes is/amended to read:

4 973.075 (4) ^(a) When property is forfeited under ss. 973.075 to 973.077, the agency
5 seizing the property may sell the property that is not required by law to be destroyed
6 or transferred to another agency. The agency may retain any vehicle for official use
7 or sell the vehicle. ^{Strike} ~~The agency may donate any computer forfeited under sub. (1) (f)~~

8 ~~to a nonprofit organization or sell it.~~ ^{PLAIN} ~~The agency seizing the property~~ may deduct
9 50% of the amount received for administrative expenses of seizure, maintenance of
10 custody, advertising and court costs and the costs of investigation and prosecution
11 reasonably incurred. The remainder shall be deposited in the school fund as the
12 proceeds of the forfeiture. If the property forfeited under ss. 973.075 to 973.077 is
13 money, all the money shall be deposited in the school fund.

14 **SECTION 16.** 973.075 (5) (intro.) of the statutes is renumbered 973.075 (5) (a)
15 and amended to read:

16 973.075 (5) (a) All forfeitures under ss. 973.075 to 973.077 shall be made with
17 due provision for the rights of innocent persons under sub. (1) (b) 2m., (bg), (bm),
18 ~~(d) and (e), and (f).~~ ^{INS 5/18} ~~(d) and (e), and (f).~~ _{subs.}

19 (c) Except as provided in sub. (5m), any property seized but not forfeited shall
20 be returned to its rightful owner. Any person claiming the right to possession of
21 property seized may apply for its return to the circuit court for the county in which
22 the property was seized. The court shall order such notice as it deems adequate to
23 be given the district attorney and all persons who have or may have an interest in
24 the property and shall hold a hearing to hear all claims to its true ownership. If the

Subject ^{to} the

to sub. (5r)

and subject to sub. (5r) ✓

right to possession is proved to the court's satisfaction, it shall order the property returned if:

SECTION 17. 973.075 (5) (a) of the statutes is renumbered 973.075 (5) (c) 1.

SECTION 18. 973.075 (5) (b) of the statutes is renumbered 973.075 (5) (c) 2.

SECTION 19. 973.075 (5) (bm) of the statutes is created to read:

973.075 (5) (bm) 1. If the seized property is a computer that was used or was to be used by a person other than its owner in the commission of a crime described in sub. (1) (f), the law enforcement agency that seized the computer shall return it to its owner within 30 days after seizing it unless all of the following occur:

a. Within 15 days after the seizure, the agency petitions the circuit court for the county in which the computer was seized or in which a prosecution for the crime described in sub. (1) (f) is pending for permission to retain the computer.

b. The agency provides notice of its petition to each owner of the real property or vehicle from which the computer was seized and to any other person claiming to be the owner of the computer.

c. The court determines that there is probable cause to believe that the owner of the computer knew that it was being used or was to be used in the commission of a crime described in sub. (1) (f). The agency shall bear the burden of showing probable cause. The owner of the computer may present evidence on this question.

2. A petition under subd. 1. may be combined with a complaint filed under s. 973.076, but, notwithstanding any request for an adjournment of forfeiture proceedings made under s. 973.076 (2) (a), the court hearing the petition shall determine whether there is probable cause under subd. 1. c. within 30 days after the computer is seized.

with respect to each
owner of the computer

- 1 3. If the court determines that there is probable cause under subd. 1. c., the
2 owner of the computer may apply for its return under s. 968.20 (1) or, if a court
3 determines under s. 973.076 that the property is not subject to forfeiture, under par.
4 (c). ✓
5 4. Notwithstanding subd. 1., if a law enforcement agency has probable cause
6 to believe that ^{the} a computer that it has seized was being used or was to be used in the
7 commission of a crime described in sub. (1) (f), the agency may copy any data from
8 the computer. (9) INS 7/8 A

- 9 SECTION 20. 973.09 (8) of the statutes is created to read:
10 973.09 (8) If the court places a child sex offender, as defined in s. 302.116 (1)
11 (ad), on probation, the court may, as a condition of probation, prohibit the person from
12 using a computer unless it is running software that prevents the person from
13 accessing computerized child pornography, as defined in 302.116 (1) (ag). (9) INS 7/13

14 (END)

INS 7/14

, as defined in s. 943.70 (1) (am) ✓

INS 7/8B